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IN THE

Supreme Court of The United States

OCTOBER TERM, 1958

No. 33

T. V. WILLIAMS, as State Revenue Commissioner,

Petitioner,

v.

STOCKHAM VALVES & FITTINGS, INC.,

Respondent.

RESPONSE TO THE PETITION FOR A WRIT OF CERTIORARI

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1957

No. 763

T. V. WILLIAMS, as State Revenue Commissioner,

Petitioner,

v.

STOCKHAM VALVES & FITTINGS, INC.,

Respondent.

RESPONSE TO THE PETITION FOR A WRIT OF CERTIORARI

Respondent, STOCKHAM VALVES & FITTINGS, INC., contends that the decision of the Supreme Court of Georgia is correct. Because of the importance of the issues raised by this case, however, and because similar issues are now before this Court in *Northwestern States Portland Cement Co. v. Minnesota*, October Term 1957, No. 606, respondent does not oppose the granting of a writ of certiorari to the Supreme Court of Georgia.

OPINIONS BELOW

The judgment of the Superior Court of Fulton County, Georgia, and the opinion and judgment of

the Supreme Court of Georgia are properly set forth in Appendix A of the Petition.

JURISDICTION

Respondent concedes that the Supreme Court has jurisdiction of this matter.

QUESTION PRESENTED

The question presented is whether or not the State of Georgia may collect its general net income tax from respondent, whose connection with Georgia is limited to the activities of its sales representative and the operation of its sales service office, all of which activities are an integral part of interstate commerce without:

(a) violating the commerce clause of the Constitution of the United States; and

(b) violating the due process clause of the Constitution of the United States.

STATUTES INVOLVED

The constitutional provisions and statutes involved are properly set forth in the Petition, pages 3-4.

STATEMENT OF THE CASE

The case was tried on an agreed Stipulation of Facts which is clear and concise. The stipulation appears in the Record before this Court. (R. 2-13).

The issues involved may be clarified by slightly expanding the statement of facts which appears in the Petition.

Respondent is a Delaware corporation which manufactured valves and pipe fittings at its plant in Alabama. (R. 2). It was not qualified to do business in Georgia. (R. 9).

Respondent maintained a sales service office in Atlanta, Georgia. (R. 3). This office was used as headquarters for its sales representative who spent approximately one-third of his time in Georgia. (R. 6). One secretary was employed at the Atlanta office. (R. 6). The sales representative called on the trade in several states, attempted to get new customers, attempted to increase the sale of respondent's products, and promoted good will. (R. 7-8). Orders which he received were forwarded to the home office in Alabama where they were either accepted or rejected. (R. 5). All shipments of goods to customers in Georgia were made f.o.b. the plant or warehouse outside of Georgia. (R. 5). Less than two per cent of respondent's sales were made to customers in Georgia. (R. 10-12).

In short, respondent operated a district sales service office in Atlanta, Georgia, in a manner typical of the distribution system adopted by large numbers of interstate business concerns.

Based on these facts alone, Georgia sought to collect its general income tax from respondent.

In petitioner's Statement of Case, there are several assertions which are argumentative in nature, but it is not believed necessary to point to them in detail here.

REASONS WHY RESPONDENT DOES NOT OPPOSE GRANTING OF THE WRIT

The total amount of taxes involved in this case is less than $1,500. While respondent does not minimize

the amount involved, it is obvious that this extensive and expensive litigation cannot be economically justified unless respondent can thereby obtain permanent relief from the tax in question. Respondent believes that in view of the similarity suggested by the petitioner between this case and *Northwestern States Portland Cement Co.* v. *Minnesota*, ... Minn. ..., 84 N. W. 2d 373 (1957) (*probable jurisdiction noted by this Court*, No. 606), denial of certiorari in this case prior to a review of the *Minnesota* case would not deter Georgia from enforcing and collecting this tax in the future. In other words, should this Court deny certiorari in this case and thereafter affirm the decision of the Supreme Court of Minnesota in the *Minnesota* case, respondent believes that petitioner would continue to enforce and collect this particular tax, even though there are some significant differences between the two cases. Thus, the mere denial of certiorari in this case will not afford respondent the permanent relief it seeks from this burdensome tax.

Further, respondent operates sales service offices in nine states and the District of Columbia. Its sales representatives regularly carry on their activities in every state of the Union. Until quite recently only one or two states made any attempt to levy their income taxes on respondent or companies which operated in a similar manner. Now, more and more states are attempting to collect their income taxes because of the activities of respondent's sales representatives. These diverse, cumulative and inconsistent state exactions have become a most serious problem. Since denial of certiorari would not amount to an affirmance of the decision of the Supreme Court of Georgia, respondent

would in all probability continue to be taxed by the other states.

After this Court's decision in *Spector Motor Service, Inc.* v. *O'Connor,* 340 U. S. 602, 71 S. Ct. 508, 95 L. Ed. 573 (1951), the several states have been divided in their interpretation of the commerce clause. Georgia, in the instant case, and Pennsylvania, in *Pennsylvania* v. *Eastman Kodak Co.,* 385 Pa. 607, 124 A. 2d 100 (1956), have held that net income taxes may not be collected from taxpayers all of whose activities are a part of interstate commerce. Minnesota, in *Northwestern States Portland Cement Co.* v. *Minnesota, supra;* and Louisiana, in *Fontenot* v. *John I. Hay Co.,* 228 La. 1031, 84 So. 2d 810 (1955), have held substantially to the contrary.

The Supreme Court of Georgia has carefully construed its income tax statute and has rendered a forthright and correct decision. Factual peculiarities of the *Minnesota* case are absent here. The Court not only held that the statute violated the commerce clause, but, in addition, it held that to impose an income tax on a company having such minimal contacts with Georgia violated the federal due process clause. On the latter issue, particularly, the facts of the instant case differ widely from the *Minnesota* case.

Unless the United States Constitution protects companies whose only connection with the taxing state is through their sales organizations from the burdensome income taxes which the several states are attempting to impose, respondent and many other small and medium-size businesses may be forced to curtail their free trade in the several states. As the Supreme Court

of Georgia has held, these taxes are precisely the sort of economic barriers which the federal constitution was and is designed to prevent.

We believe that this case, based as it is on an agreed stipulation of facts, presents the constitutional questions clearly and simply. Further, as stated above, we believe that there are differences between this case and the *Minnesota* case of a degree that should result in affirmance of the decision of the Supreme Court of Georgia in this case, whatever may be the outcome in the *Minnesota* case. So as to afford respondent an opportunity to (1) present its arguments on these important constitutional questions in a clear-cut case, and (2) point out to the Court the important differences between this case and the *Minnesota* case, respondent does not oppose the granting of the writ.

We will reserve comment on petitioner's legal arguments until this Court has ruled on the Petition.

CONCLUSION

For the foregoing reasons, respondent does not oppose the Petition for a Writ of Certiorari to the Supreme Court of Georgia.

Respectfully submitted,

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